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Human Rights Brief 2016-2019 Regional Coverage

Spring 2017

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Recommended Citation

Human Rights Brief, "Europe & Central Asia Coverage" (2017). *Human Rights Brief Spring 2017 Regional Coverage*. 7.
<https://digitalcommons.wcl.american.edu/hrbregionalcoverage-spring2017/7>

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France's State of Emergency: The Human Rights Cost of Security

February 20, 2017
by Powell Wright

Following the Paris terror attacks in November 2015 that left 130 people dead, France's National Assembly voted to enter into a [state of emergency](#).

This state of emergency was extended in July 2016 for an additional six months, following the [Nice terrorist attacks](#). Last December, France extended its state of emergency for an additional [seven months](#), bringing the total duration to 20 months. Prime Minister Manuel Valls supports the extension, arguing that France must expect more deadly attacks, but should ["learn and live with this menace."](#)

A state of emergency generally lessens restrictions on government for investigating terrorism. For example, under French law, a search of a premise is typically authorized by judicial authorities. However, under the emergency regime, Prefects, who represent the state at the local level, can authorize a search on vague grounds such as a "reason to believe that the location is frequented by a person whose behavior constitutes a [threat to public order and security](#)." During a state of emergency between November 14, 2015 and January 29, 2016, French authorities conducted 3,242 such searches, with orders Amnesty International argues were short and [contained very little information](#). Also, French authorities can legally impose assigned residence orders on individuals when there are serious or consistent elements to suspect that they have committed a crime. Under the emergency regime, imposing an assigned residence order requires only that "there are serious reasons to believe that a person's behavior constitutes a threat to [security and public order](#)." France uses this power as a preventive measure, but under the emergency measures authorities need not [provide evidence demonstrating](#) effectiveness in preventing further terrorist attacks.

While the state of emergency is intended to improve France's national security, many argue that its consequences are detrimental to human rights. Amnesty International's Europe Director argues that the extension "threatens to turn a generalized security threat into grounds for a constant [state of emergency](#)." Nadim Houry, the Director of Human Rights Watch's terrorism and counterterrorism program, argues that the state of emergency is becoming the new norm, which is dangerous for a democracy based on rule of law, and that authorities should reevaluate their [reliance on such measures](#). France's own parliamentary commission of inquiry found last July that the emergency regime had a "limited impact" on security, and that the nation's intelligence agencies [should consider overhaul](#).

France's state of emergency seems to provide authorities with powers similar to what American law recognizes as exigent circumstances for searches and seizures. The main difference is that France is recognizing such circumstances as constantly existing since the Parisian terrorist attacks. Although initial terrorism investigations typically reveal a lot of information about possible suspects without any need to search an individual's home, such investigations can only go so far. The state of emergency's lowered search standard cannot, however, continue relying on vague

premises for an extended period. Vague warrant standards already risk discrimination regarding which searches are deemed legal, but the state of emergency's extension further risks that these standards will continually ignore basic individual rights. Although one could understand a temporary grant of exigent powers, France's state of emergency simply assumes the constant need to depart from pre-existing legal standards.

In addition to relaxing standards for searches of private homes, assigning prefects to issue warrants instead of judges can raise issues regarding whether a search is justified at all. Extending the authority to write a warrant risks leaving interpretation of existing law to those without enough experience and knowledge of law as a judge. One may argue that France's civil legal system encourages multiple interpretations of the law, and therefore prefects can issue such warrants without significant legal repercussions. Allowing the prefects to have extended powers could have a lasting effect with unintended and negative consequences such as interpreting the law to further discriminate and target specific groups of France's population. Furthermore, the recent [arrest foiling an imminent terror plot](#) does not justify a continued state of emergency. A judge could have issued a warrant of probable cause upon examining [the video of the suspect pledging allegiance to ISIS](#) without needing a prefect's determination.

If France is to continue its state of emergency, it must improve its transparency on the emergency regime's measures and provide evidence of its effectiveness. Without such evidence, France's systemic issuing of unwarranted searches or assigned residence orders remains unjustified. The Parisian terrorist attacks left France with many difficult decisions to make regarding its investigations, but if France prides itself as a bastion of human rights it must lift its state of emergency, or revoke some of the authority police are granted during the state. The state of emergency's extension risks too much for France's citizens and reputation for human rights without proof of its effectiveness.

Xenophobic and Racist Hate Crimes Surge in the European Union

February 28, 2017
by Ericha Penzien

Over the past several years, the [European Union has faced increasing challenges](#) in a number of areas, including emerging violent extremist groups and a rising number of refugees, asylum seekers, and migrants.

With the [majority of immigrants](#) entering Europe from countries such as Syria, Afghanistan, Iraq, Eritrea, Nigeria, Pakistan, and Gambia, race-based crimes, also referred to under the umbrella term, “hate crimes,” have been on the rise. The European Union Agency for Fundamental Rights defines [hate crimes](#) as “violence and offences motivated by racism, xenophobia, religious intolerance, or by bias against a person’s disability, sexual orientation or gender identity.”

In April 2016, the [European Union’s Agency for Fundamental Rights](#) urged member states to address the discrepancy between reported and unreported hate crimes, in addition to prosecuting and punishing those guilty of committing the crimes. On average, British police officials estimate that [only one in every four hate crimes is reported](#). This [discrepancy](#) between reported and unreported hate crimes may be attributed, in part, to the differences of how individuals define what constitutes a hate crime. Reports show that [only 28 percent of the British population](#) think that using racial slurs equate to a hate crime. Furthermore, about the same percentage of the population believes that the [EU referendum unfairly restricts freedom of speech](#).

Many British citizens blame the EU referendum for a [spike in reported hate crimes](#), including [forty-five percent of Brexit supporters](#) who agree that hate crimes worsened after the referendum was passed. The UN Committee on Eliminating Racial Discrimination [cites “divisive, anti-immigrant and xenophobic rhetoric”](#) as a major influence on the spike in hate crimes surrounding the Brexit referendum. Compared to the same period in 2015, 2016 saw an increase of [over forty percent in reported hate crime incidents](#), with concerns from officials that the actual number of incidents could be higher. In addition to race-based hate crimes, Britain also saw a rise in hate crimes based on sexual orientation. [Galop](#), a London-based LGBT anti-violence charity, reported that [hate crimes motivated by sexual orientation rose 147 percent](#) during the late summer of 2016.

Other countries across Europe have also experienced an increased rate of hate crimes over the past several years. Between 2014 and 2015, [Germany reported a 77 percent increase](#) in hate crimes. Amnesty International reported that [incidents of race-based violence](#) are at an all-time high since World War II in Germany. Statistics collected by Germany’s Interior Ministry show that [asylum shelters were attacked 1,031 times](#) in 2015, a drastic increase from 199 attacks in 2014 and sixty-nine attacks in 2013. In Spain, the Spanish Federation of Islamic Religious Entities reported [religious-based, anti-Islam attacks increased](#) from forty-eight in 2014, to 534 in 2015. Additionally, Spain’s Interior Ministry published statistics for 2015 reporting hundreds of [hate crimes based on disability, ideology, and sexual orientation](#). In France, following a [state of](#)

[emergency](#) declaration in late 2015, [police officials led over 4,000 raids](#) without warrants and restricted over 400 people to house arrest in careful protection of national security; however, only six of the abusive intrusions led by the French police ended in terrorism-related criminal investigations.

Forty-seven European countries are parties to the [European Convention on Human Rights](#) (ECHR). Under this convention, all parties have committed to upholding equal human rights protection to all citizens and ensuring fundamental freedoms to all European citizens. Protocol No. 12, Article 1 of the [European Convention on Human Rights](#) provides: “The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

To combat the spike in hate crimes, member states of the European Union are taking additional steps to uphold the provisions of the ECHR. In July 2016, the [United Kingdom government published its plan](#) to put an end to the increased hate crimes and discriminatory violence. In late 2016, Germany announced that it was considering [new laws to hold social media platforms accountable](#) for taking down illegal discriminatory posts down as a method to stop widespread hate crimes supported by hateful speech on the Internet. Furthermore, in the summer of 2017 the Council of Europe will host [Human Rights Education for Legal Professionals \(HELP\)](#), training course for member states to learn and discuss ways to stop hate crimes and promote the values and responsibilities they have under the European Convention on Human Rights.

Although instability and uncertainty in the region currently prevail, signed conventions and promises to ensure equal human rights to all in Europe cannot be forgotten. Warnings from officials in Britain caution that as Britain’s planned deadline to leave the European Union officially at the end of March approaches, [citizens in the European Union countries are likely to participate in violence and hate crimes](#) as a sign of opposition once again. However, taking a lesson from U.S. President Donald Trump’s presidential campaign that consisted of hateful and xenophobic rhetoric, [racism and leadership is not the path to effective leadership](#), cautions Kenneth Roth, the Executive Director at Human Rights Watch.

Protecting Migrants While Maintaining Security in Ceuta

March 13, 2017
by Powell Wright

Migrants traveling between Morocco and Spain are facing major crises regarding security, citizenship, and societal integration.

Ceuta, a small autonomous city on Morocco's northern coast governed by Spain, is experiencing an increasing number of [attempts at illegal migration](#). The city's border is enclosed by a six-meter high barbed wire fence and guarded by [Spanish police](#). An estimated 800 to 1,100 migrants attempted to scale Ceuta's fence and clashed with Spanish authorities on [January 1, 2017 alone](#). This incident resulted in two migrant injuries, 800 arrests, five Spanish police injuries, and [fifty Moroccan police injuries](#). Migrants have even attempted to cross the border by hiding in [suitcases and cars](#).

Following the January raid, Morocco's interior ministry announced that such attempts to illegally cross into Ceuta will be presented before competent judicial authorities who will "decree their expulsion from [Morocco] or heavier penalties according to the [gravity of the act](#)." Alternatively, Spain reacted to the influx by turning back some [migrants to Morocco](#). Human rights groups criticized Spain's immigrant rejection because the state's lengthy deportation procedures often deprive people the [opportunity to claim asylum](#).

African migrants crossing the Mediterranean Sea suffered the deadliest year ever with almost [5,000 deaths in 2016](#). Most migrants have no documentation and originate from Sub-Saharan African countries. Many risk their lives to settle in Morocco or Spain hoping for employment or a [peaceful political climate](#). Unfortunately, Moroccan police do not tolerate and often arrest [undocumented migrants](#). Some migrants build makeshift camps in rural and forest regions of Morocco [to escape the police](#).

In 2013, Morocco became the first Arab nation to offer undocumented migrants permanent residency, in response to the National Council for [Human Rights' recommendations](#). Morocco's one-year campaign provided documentation to approximately 27,000 migrants—more than ninety percent of migrants who applied. Still, Morocco remains highly homogenous, and migrants continue facing social and [economic discrimination](#). Police continue arresting migrants, landlords refuse to rent to them, and [employers often do not hire them](#). As a result, many migrants either remain in makeshift settlements, or [attempt to enter Europe](#).

Spain provides legal documentation to previously unauthorized migrants through [periodic "regularization" programs](#). In 2005, migrant workers in Spain received documented status if they were residents for one year, had no criminal record, and had a future employment contract for six months, or [three months for agricultural contracts](#). In 2014, an estimated 714,000 Moroccans lived in Spain, [the second-largest group only to Romanians](#).

The three major issues facing migrants in Morocco and Spain are freedom of movement into Europe, documentation, and regularization. Article 12 of the International Covenant on Civil and Political Rights (ICCPR) unfortunately may not protect these [migrants' right to movement](#). The freedom to leave any country does not necessarily allow [entrance to any other country](#). Furthermore, migrants are not being deprived of [entry into their own country](#). There may be a compelling argument, however, that Moroccan migrants are deprived of choosing their residence due to housing discrimination and [forced residence in makeshift communities](#). If the ICCPR's Right to Movement in Article 12(1) is enforced in Morocco, many migrants should have better access to residency options.

Morocco's migrants, like others around the world, will risk their lives to achieve safety and well-being. Increased security will not prevent migrants from attempting to scale the fence, but allowing migration directly into mainland Spain can alleviate Ceuta's burden in taking in more people. Perhaps requesting assistance from other Mediterranean nations, including Portugal or France, will alleviate Spain's and Ceuta's burden, but while migrants continue risking their lives to enter Europe, increased security can only lead to more deaths and injuries.

Documentation accessibility is improving, but may be improved by greater interaction with migrant communities. Although 27,000 migrants successfully became citizens in Morocco, some Morocco initiated integration by granting citizenship to thousands of migrants; however, this policy isn't necessarily enough without societal integration.

Spain's regularization policies can translate into Morocco's policy to benefit its migrants and alleviate many of its documentation problems. Spain's policy of encouraging its migrants to engage in work contracts before becoming legal citizens helps to integrate migrants into their culture and society. Unlike Morocco's policy to simply allow documentation, Spain's policy can eliminate social and economic discrimination in its borders. When migrants feel safe and integrated, many are less likely to choose living in makeshift settlements. The financial barrier still exists, but migrant integration into Spain's economy should alleviate this burden. When Morocco and Spain's government accepts migrants into their economy, the migrant's lives and nations' economies prosper.

Ireland's Victim of Crimes Bill Publication Receives Mixed Reactions

April 20, 2017
by Powell Wright

On December 29, 2016, Ireland published its new Victims of Crime Bill to satisfy the [Victim's Directives](#) implemented by 2012/29/EU, which supported victim's rights legislation for all European Union nations.

[The Victim's Directive](#) was introduced in Ireland on November 16, 2015. The Bill was originally unpublished and not adopted, meaning it [had no legislative](#) effect. In response, the EU issued infringement proceedings against Ireland for failing to communicate with it, and resisting the Directive's implementation. With the Bill's publication, Ireland can abide by the EU's minimum requirements to support and [protect all victims of crime](#).

The published [Victims of Crime Bill expands the definition of a "victim"](#) to "a natural person who has suffered harm, including physical, mental or emotional harm or economic loss, which was directly caused by an offence." The Bill provides for informational rights for the victim upon first contact with Ireland's police, better known as the [Garda Síochána](#). The victim receives procedural information including [any significant developments in the investigation](#) such as the arrest or charging of a suspect, the reasons why an investigation was discontinued, a decision not to prosecute, or information regarding the imprisonment and release of an offender. Yet another important component of the Bill is that an individual assessment must be carried out for all victims in order to identify any form of protection a victim may need, and to what extent he or she may [benefit from protection measures](#) intended to safeguard the safety and welfare of the victim. [Protection measures may include](#) advice regarding the personal safety of the victim or property. The Bill specifies that special measures during investigation may include an interview conducted by a "specially trained person." [Other provisions include](#) excluding the public to protect the victim, assisting children where their parent or guardian is unavailable, and amending Ireland's Criminal Justice Act of 1993 to allow victims to make an "impact statement" about any harm directly caused by an offense.

The Victims of Crime Bill is widely praised by the [Victims' Rights Alliance \(VRA\)](#) and its coordinator, Maria McDonald. [McDonald stated](#) that the Bill will "improve the day to day experiences of victims of crime in Ireland," and that publication of the Bill "is the first step to ensuring that victims of crime are treated with dignity and respect."

The Bill is not without criticism, however. Even before the Bill was written in November 2015, the [Irish government received criticism](#) that the funding for the Victims of Crime Office would need to be more than empty promises. The Irish [Human Rights and Equality Commission said](#) that Ireland needs legislative reform to prevent repeated victimization, intimidation, and retaliation through use of specially trained interviewers. This group pointed out that a [high volume of crime victims](#) do not engage with the criminal justice system. Even the [VRA agreed](#) that the Bill's failure to include safeguards on restorative justice, possibly meaning remedial measures, was "a very

obvious omission.” Another complaint the Commission brought against the Bill has to do with its [non-expansive definition of “victim,”](#) stating that an individual should be considered one regardless of whether an offender is identified, apprehended, prosecuted or convicted.

Despite its criticisms, Ireland’s Victims of Crime Bill is a positive step forward for the country after its delayed implementation. Providing victims with appropriate information following a police report should help protect victims of violent crime. The offered service should also help the victim make informed decisions, as well as encourage all Irish individuals to bring forward otherwise-unreported crimes. The specialized reports will require resources from Ireland’s Victims of Crime Office, but the greater emphasis on information and analysis will help criminal investigations find the perpetrator and appropriately protect the victim.

The Irish Human Rights and Equality Commission, however, is right for recommending changes to the Bill to allow a more expansive definition of a “victim” and a method of communication for victims to report crimes. In requiring an “offense” to be identified in order to classify someone as a victim, the survivor may improperly assume that identifying a perpetrator is required before he or she can receive any services. The Bill’s failure to provide for a victim reporting service is also problematic. Ireland’s Victims of Crime Bill is clearly lacking the specificity necessary to assure the human rights it wishes to protect. One may argue that the Bill’s interpretations should be left to the court, but without prior precedent, an Irish Court could rule in favor of an interpretation not intended by Ireland’s Parliament. Although the Victim of Crime Bill is very late, providing the additional detail recommended by the Irish Human Rights and Equality Commission may prevent confusion or unintended consequences.